

February 26, 2024

Ralph A. Dengler

T: 212.503.0655

F: 212.307.5598

E: radengler@venable.com

By ECF & Email to Failla NYSDChambers@nysd.uscourts.gov

Honorable Katherine Polk Failla

United States District Judge

United States District Court for the Southern District of New York

40 Foley Square, Room 2103

New York, New York 10007

MEMO ENDORSED

Re: *Railware, Inc. v. National Railroad Passenger Corporation dba Amtrak*, 1:22-cv-05013 (KPF)
Amtrak's Letter Motion to File Documents Under Seal

Dear Judge Failla,

We represent Amtrak in the above-referenced litigation. Pursuant to Your Honor's Individual Practice Rule 9(B), we respectfully request leave to file under seal Amtrak's Letter concerning Railware's discovery that it designated as Attorneys' Eyes Only ("Letter") and accompanying Exhibits 5-8, filed contemporaneously herewith.¹ The parties met and conferred on February 23, 2024 to discuss this sealing request, and Railware does not oppose this application.

It is well-settled that any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). The preservation of sensitive business information has been found to warrant sealing. *Averbach v. Cairo Amman Bank*, No. 19-CV-0004-GHW-KHP, 2023 WL 4144758, at *2 (S.D.N.Y. June 23, 2023); *see also Louis Vuitton Malletier S.A. v. Sunny Merchandise Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015). A sealing request is "narrowly tailored" when it seeks to seal only that information that must be sealed to preserve higher values. *Susquehanna Int'l Grp. Ltd. v. Hibernia Express (Ir.) Ltd.*, No. 21 Civ. 207 (PGG), 2021 WL 3540221, at *4 (S.D.N.Y. Aug. 11, 2021).

In its Letter, Amtrak seeks to seal certain discovery Railware has designated as Highly Confidential – Attorneys' Eyes Only ("HCAEO"). Exhibits 5 through 8 to the Letter contain documents and responses produced by Railware during initial discovery exchanges. Because Railware has designated each of these discovery documents and responses in their entirety as containing sensitive business information, Amtrak seeks to seal them in their entirety. Amtrak's Letter also quotes from those exhibits and, as such, Amtrak seeks to redact only those portions of its Letter regarding Railware's HCAEO discovery in an effort to narrowly tailor its redactions.

Accordingly, Amtrak respectfully requests that the Court grant its request to seal Exhibits 5 through 8 in their entirety and the highlighted portions of Amtrak's letter.

¹ By moving to seal, Amtrak takes no position on Railware's confidentiality designations.



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Respectfully Submitted,

/s/Ralph A. Dengler

Ralph A. Dengler

Counsel for Amtrak

Application GRANTED. The Clerk of Court is also directed to maintain docket entry 89 under seal, viewable to the Court and the parties only.

The Clerk of Court is further directed to terminate the pending motion at docket entry 87.

Dated: February 27, 2024
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE